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Report of the United Nations Commission on International Trade Law on the work of its fifty-first session

Report of the Sixth Committee

Rapporteur: Ms. Nadia Alexandra **Kalb** (Austria)

I. Introduction

1. At its 3rd plenary meeting, on 21 September 2018, the General Assembly, on the recommendation of the General Committee, decided to include in the agenda of its seventy-third session the item entitled "Report of the United Nations Commission on International Trade Law on the work of its fifty-first session" and to allocate it to the Sixth Committee.

2. The Sixth Committee considered the item at its 15th, 32nd and 34th meetings, on 16 October and 2 and 6 November 2018. The views of the representatives who spoke during the Committee's consideration of the item are reflected in the relevant summary records.[1]

3. For its consideration of the item, the Committee had before it the report of the United Nations Commission on International Trade Law on the work of its fifty-first session (A/73/17).

4. At the 15th meeting, on 16 October, the Chair of the United Nations Commission on International Trade Law at its fifty-first session introduced the report of the Commission on the work of its fifty-first session.

II. Consideration of proposals

A. Draft resolution A/C.6/73/L.11

5. At the 32nd meeting, on 2 November, the representative of Austria, on behalf of Argentina, Armenia, Austria, Belarus, Belgium, Bulgaria, Canada, Central African Republic, Croatia, Cyprus, Czechia, El Salvador, Finland, France, Germany, Greece,

[1] A/C.6/73/SR.15, A/C.6/73/SR.32 and A/C.6/73/SR.34.

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Honduras, Hungary, Iceland, India, Ireland, Israel, Italy, Japan, Latvia, Liechtenstein, Lithuania, Malaysia, Mauritius, Namibia, Poland, Portugal, Republic of Moldova, Romania, Singapore, Slovakia, Sweden, Thailand and Ukraine, introduced a draft resolution entitled "Report of the United Nations Commission on International Trade Law on the work of its fifty-first session" (A/C.6/73/L.11). At the same meeting, the representative of Austria announced that Mexico, the Russian Federation, Seychelles and Switzerland had joined in sponsoring the draft resolution.

6. At the 34th meeting, on 6 November, the representative of Austria announced that Serbia and Spain had also joined in sponsoring the draft resolution.

7. At the same meeting, the Committee adopted draft resolution A/C.6/73/L.11 without a vote (see para. 14, draft resolution I).

B. Draft resolution A/C.6/73/L.12

8. At the 32nd meeting, on 2 November, the representative of Austria, on behalf of the Bureau, introduced a draft resolution entitled "United Nations Convention on International Settlement Agreements Resulting from Mediation" (A/C.6/73/L.12).

9. At its 34th meeting, on 6 November, the Committee adopted draft resolution A/C.6/73/L.12 without a vote (see para. 14, draft resolution II). The representative of Singapore made a statement in explanation of position, after the adoption of the draft resolution.

C. Draft resolution A/C.6/73/L.13

10. At the 32nd meeting, on 2 November, the representative of Austria, on behalf of the Bureau, introduced a draft resolution entitled "Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation of the United Nations Commission on International Trade Law" (A/C.6/73/L.13).

11. At its 34th meeting, on 6 November, the Committee adopted draft resolution A/C.6/73/L.13 without a vote (see para. 14, draft resolution III).

D. Draft resolution A/C.6/73/L.14

12. At the 32nd meeting, on 2 November, the representative of Austria, on behalf of the Bureau, introduced a draft resolution entitled "Model Law on Recognition and Enforcement of Insolvency-Related Judgments of the United Nations Commission on International Trade Law" (A/C.6/73/L.14).

13. At its 34th meeting, on 6 November, the Committee adopted draft resolution A/C.6/73/L.14 without a vote (see para. 14, draft resolution IV).

III. Recommendations of the Sixth Committee

14. The Sixth Committee recommends to the General Assembly the adoption of the following draft resolutions:

Draft resolution I
Report of the United Nations Commission on International Trade Law on the work of its fifty-first session

The General Assembly,

Recalling its resolution 2205 (XXI) of 17 December 1966, by which it established the United Nations Commission on International Trade Law with a mandate to further the progressive harmonization and unification of the law of international trade and in that respect to bear in mind the interests of all peoples, in particular those of developing countries, in the extensive development of international trade,

Reaffirming its belief that the progressive modernization and harmonization of international trade law, in reducing or removing legal obstacles to the flow of international trade, especially those affecting developing countries, would contribute significantly to universal economic cooperation among all States on a basis of equality, equity, common interest and respect for the rule of law, to the elimination of discrimination in international trade and, thereby, to peace, stability and the well-being of all peoples,

Having considered the report of the Commission,[1]

Reiterating its concern that activities undertaken by other bodies in the field of international trade law without adequate coordination with the Commission might lead to undesirable duplication of efforts and would not be in keeping with the aim of promoting efficiency, consistency and coherence in the unification and harmonization of international trade law,

Reaffirming the mandate of the Commission, as the core legal body within the United Nations system in the field of international trade law, to coordinate legal activities in this field, in particular to avoid duplication of efforts, including among organizations formulating rules of international trade, and to promote efficiency, consistency and coherence in the modernization and harmonization of international trade law, and to continue, through its secretariat, to maintain close cooperation with other international organs and organizations, including regional organizations, active in the field of international trade law,

1. *Takes note with appreciation* of the report of the United Nations Commission on International Trade Law;[1]

2. *Commends* the Commission for the finalization of the draft convention on international settlement agreements resulting from mediation;[2]

3. *Also commends* the Commission for the finalization and adoption of the Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation,[3] the Legislative Guide on Key Principles of a

[1] *Official Records of the General Assembly, Seventy-third Session, Supplement No. 17* (A/73/17).
[2] Ibid., chap. III, sect. B, and annex I.
[3] Ibid., chap. III, sect. C, and annex II.

Business Registry[4] and the Model Law on Recognition and Enforcement of Insolvency-Related Judgments and its Guide to Enactment;[5]

4. *Notes with appreciation* the event held to mark the sixtieth anniversary of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention of 1958),[6] at which it was acknowledged that the Convention, with its almost universal acceptance, brings legal certainty to business operations worldwide, thereby contributing to decreasing the level of risk and transactional costs associated with international trade, furthering the Sustainable Development Goals[7] and, by establishing a fundamental legal framework for the use of arbitration and its effectiveness, strengthens respect for binding commitments, inspires confidence in the rule of law and ensures fair treatment in the resolution of disputes arising over contractual rights and obligations;[8]

5. *Notes with satisfaction* the contributions from the Fund for International Development of the Organization of the Petroleum Exporting Countries and from the European Commission, which allow the operation of the repository of published information under the Rules on Transparency in Treaty-based Investor-State Arbitration[9] and that the Commission reiterated its strong and unanimous opinion that the secretariat of the Commission should continue to operate the transparency repository, which constitutes a central feature both of the Rules on Transparency and of the United Nations Convention on Transparency in Treaty-based Investor-State Arbitration (Mauritius Convention on Transparency);[10]

6. *Requests* the Secretary-General to continue to operate, through the secretariat of the Commission, the repository of published information in accordance with article 8 of the Rules on Transparency, as a pilot project until the end of 2020, to be funded entirely by voluntary contributions, and to keep the General Assembly informed of developments regarding the funding and budgetary situation of the transparency repository based on its pilot operation;

7. *Takes note with interest* of the decisions taken by the Commission as regards its future work and the progress made by the Commission in its work in the areas of micro, small and medium-sized enterprises, dispute settlement, investor-State dispute settlement reform, electronic commerce, insolvency law and security interests and privately financed infrastructure projects,[11] as well as the decisions to take up work on expedited arbitration and, as its next priority, the judicial sale of ships, to conduct exploratory and preparatory work on warehouse receipts, to compile information on legal issues related to the digital economy aimed at enabling the commercial use of new technologies and methods and assisting developing economies in bridging the digital gap, and to undertake exploratory work on contractual networks and the civil law aspects of asset tracing and recovery,[12] and encourages the Commission to continue to move forward efficiently to achieve tangible work outcomes in those areas;

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[4] Ibid., chap. IV, sects. B and C.

[5] Ibid., chap. V, sect. A, and annex III.

[6] United Nations, *Treaty Series*, vol. 330, No. 4739.

[7] See resolution 70/1.

[8] See *Official Records of the General Assembly, Seventy-third Session, Supplement No. 17* (A/73/17), chap. X.

[9] Ibid., *Sixty-eighth Session, Supplement No. 17* (A/68/17), annex I.

[10] Resolution 69/116, annex.

[11] See *Official Records of the General Assembly, Seventy-third Session, Supplement No. 17* (A/73/17), chaps. IV–IX.

[12] Ibid., chap. XVII, sects. A and B.

8. *Welcomes* the decision by the Commission to give Working Group IV a more specific mandate to conduct work on legal issues in the area of identity management and trust services with a view to facilitating cross-border recognition of identity management and trust services on the basis of the principles and issues identified by the Working Group at its fifty-sixth session,[13] and takes note of the decision of the Commission to request the Secretariat to prepare, within existing resources, a pilot online tool containing the draft notes on the main issues of cloud computing contracts, for consideration at its next session, in 2019;[14]

9. *Endorses* the efforts and initiatives of the Commission, as the core legal body within the United Nations system in the field of international trade law, aimed at increasing coordination of and cooperation on legal activities of international and regional organizations active in the field of international trade law and at promoting the rule of law at the national and international levels in this field, and in this regard appeals to relevant international and regional organizations to coordinate their activities with those of the Commission, to avoid duplication of efforts and to promote efficiency, consistency and coherence in the modernization and harmonization of international trade law;

10. *Reaffirms* the importance, in particular for developing countries, of the work of the Commission concerned with technical cooperation and assistance in the field of international trade law reform and development, and in this connection:

(a) Welcomes the initiatives of the Commission towards expanding, through its secretariat, its technical cooperation and assistance programme, in that respect encourages the Secretary-General to seek partnerships with State and non-State actors to increase awareness about the work of the Commission and facilitate the effective implementation of legal standards resulting from its work, and notes in that regard the round table on technical assistance held during the fifty-first session of the Commission, which brought together governmental and intergovernmental organizations active in international development assistance to explore synergies and discuss ways to further cooperate with the secretariat of the Commission in implementing sound reforms of international trade law;

(b) Expresses its appreciation to the Commission for carrying out technical cooperation and assistance activities and for providing assistance with legislative drafting in the field of international trade law, and draws the attention of the Secretary-General to the limited resources that are made available in this field;

(c) Expresses its appreciation to the Governments whose contributions enabled the technical cooperation and assistance activities to take place, and appeals to Governments, the relevant bodies of the United Nations system, organizations, institutions and individuals to make voluntary contributions to the United Nations Commission on International Trade Law trust fund for symposia and, where appropriate, for the financing of special projects and otherwise to assist the secretariat of the Commission in carrying out technical cooperation and assistance activities, in particular in developing countries;

(d) Reiterates its appeal to the United Nations Development Programme and other bodies responsible for development assistance, such as the World Bank and regional development banks, as well as to Governments in their bilateral aid programmes, to support the technical cooperation and assistance programme of the Commission and to cooperate with the Commission and coordinate their activities with those of the Commission in the light of the relevance and importance of the work and programmes of the Commission for the promotion of the rule of law at the

[13] Ibid., chap. VIII, para. 159.
[14] Ibid., para. 155.

national and international levels and for the implementation of the international development agenda, including the achievement of the 2030 Agenda for Sustainable Development;[7]

(e) Recalls its resolutions stressing the need to strengthen support to Member States, upon their request, in the domestic implementation of their respective international obligations through enhanced technical assistance and capacity-building, and welcomes the efforts of the Secretary-General to ensure greater coordination and coherence among United Nations entities and with donors and recipients;

11. *Recalls* the importance of adherence to the rules of procedure and methods of work of the Commission, including transparent and inclusive deliberations, taking into account the summary of conclusions as reproduced in annex III to the report on the work of its forty-third session,[15] requests the Secretariat to issue, prior to meetings of the Commission and of its working groups, a reminder of those rules of procedure and methods of work with a view to ensuring the high quality of the work of the Commission and encouraging the assessment of its instruments, recalls in this regard its previous resolutions related to this matter, and notes that the Commission, during its fifty-first session, welcomed a joint comprehensive proposal submitted by Member States on its methods of work, including to use information-only documents on matters not requiring in-depth discussions, to apply a flexible approach to the allocation of meeting days with the goal of finalizing instruments and subsequently making decisions on future work in consecutive sessions of the Commission, to conduct a more efficient discussion of the topic of the role of the Commission in the promotion of the rule of law and to explore the possibility of reducing the duration of Commission sessions to two weeks, when possible and subject to the need for finalization of ongoing projects by the Commission, all aimed at enhancing the efficiency of the Commission's work as well as reducing the burden on delegations, and to streamline and focus the Commission's agenda and preparation for the session, and notes in that respect that the Secretariat was requested to plan and prepare for the fifty-second session of the Commission, in 2019, on the basis of that proposal;[16]

12. *Welcomes* the activities of the United Nations Commission on International Trade Law Regional Centre for Asia and the Pacific, in the Republic of Korea, towards providing capacity-building and technical assistance services to States in the Asia-Pacific region, including to international and regional organizations, expresses its appreciation to the Republic of Korea and China, whose contributions enabled continuing operation of the Regional Centre, notes that the continuation of the regional presence relies entirely on extrabudgetary resources, including but not limited to voluntary contributions from States, welcomes expressions of interest from other States in hosting regional centres of the Commission, and requests the Secretary-General to keep the General Assembly informed of developments regarding the establishment of regional centres, in particular their funding and budgetary situation;

13. *Notes* that, further to the offer of the Government of Cameroon in 2017, approved by the Commission, to establish, subject to the relevant rules and regulations of the United Nations and the internal approval process of the Office of Legal Affairs of the Secretariat, a regional centre for Africa in Cameroon,[17] the Government of Cameroon is continuing to examine the financial implications and the feasibility of establishing that regional centre, and encourages the secretariat of the Commission to continue its consultations and consider carefully the level of human

[15] Ibid., *Sixty-fifth Session, Supplement No. 17* (A/65/17).

[16] Ibid., *Seventy-third Session, Supplement No. 17* (A/73/17), chap. XVIII, sect. A.

[17] Ibid., *Seventy-second Session, Supplement No. 17* (A/72/17), para. 293.

resources that it would need for the efficient management of any new regional centre and for ensuring adequate supervision by, and coordination with, Vienna-based secretariat staff,[18] and requests the Commission, in its annual report, to keep the General Assembly informed of developments regarding the project, in particular its funding and budgetary situation;

14. *Appeals* to Governments, the relevant bodies of the United Nations system, organizations, institutions and individuals to make voluntary contributions to the trust fund established to provide travel assistance to developing countries that are members of the Commission, at their request and in consultation with the Secretary-General, in order to enable renewal of the provision of that assistance and to increase expert representation from developing countries at sessions of the Commission and its working groups, necessary to build local expertise and capacities in those countries to put in place a regulatory and enabling environment for business, trade and investment;

15. *Decides*, in order to ensure full participation of all Member States in the sessions of the Commission and its working groups, to continue, in the competent Main Committee during the seventy-third session of the General Assembly, its consideration of granting travel assistance to the least developed countries that are members of the Commission, at their request and in consultation with the Secretary-General, and notes the contributions from the European Union and the Swiss Agency for Development and Cooperation to the trust fund, which would facilitate the participation of representatives of developing States in the deliberations of Working Group III;

16. *Endorses* the conviction of the Commission that the implementation and effective use of modern private law standards in international trade are essential for advancing good governance, sustained economic development and the eradication of poverty and hunger and that the promotion of the rule of law in commercial relations should be an integral part of the broader agenda of the United Nations to promote the rule of law at the national and international levels, including through the Rule of Law Coordination and Resource Group, supported by the Rule of Law Unit in the Executive Office of the Secretary-General;

17. *Notes* the role of the Commission in promoting the rule of law, respective activity in the Commission at its fifty-first session[19] and the comments transmitted by the Commission, pursuant to paragraph 25 of General Assembly resolution 72/119 of 7 December 2017, highlighting the role in the promotion of the rule of law of the texts adopted or approved by the Commission and of its ongoing work, in particular through wide dissemination of international commercial law, including across the United Nations system;[20]

18. *Notes with satisfaction* that, in paragraph 8 of the declaration of the high-level meeting of the General Assembly on the rule of law at the national and international levels, adopted by consensus as resolution 67/1 of 24 September 2012, Member States recognized the importance of fair, stable and predictable legal frameworks for generating inclusive, sustainable and equitable development, economic growth and employment, generating investment and facilitating entrepreneurship and, in this regard, commended the work of the Commission in modernizing and harmonizing international trade law and that, in paragraph 7 of the declaration, Member States expressed their conviction that the rule of law and development were strongly interrelated and mutually reinforcing;

[18] Ibid., *Seventy-third Session, Supplement No. 17* (A/73/17), para. 200.
[19] Ibid., paras. 230–231.
[20] Ibid., chap. XV.

19. *Also notes with satisfaction* that, in paragraph 89 of the Addis Ababa Action Agenda of the Third International Conference on Financing for Development, adopted by the General Assembly by consensus as resolution 69/313 of 27 July 2015, States endorsed the efforts and initiatives of the Commission, as the core legal body within the United Nations system in the field of international trade law, aimed at increasing coordination of and cooperation on legal activities of international and regional organizations active in the field of international trade law and at promoting the rule of law at the national and international levels in this field;

20. *Reiterates its request* to the Secretary-General, in conformity with resolutions of the General Assembly on documentation-related matters,[21] which, in particular, emphasize that any invitation to limit, where appropriate, the length of documents should not adversely affect either the quality of the presentation or the substance of the documents, to bear in mind the particular characteristics of the mandate and functions of the Commission in the progressive development and codification of international trade law when implementing page limits with respect to the documentation of the Commission;[22]

21. *Requests* the Secretary-General to continue the publication of Commission standards and the provision of summary records of the meetings of the Commission, including committees of the whole established by the Commission for the duration of its annual session, relating to the formulation of normative texts, and takes note of the decision of the Commission to continue the trial use of digital recordings, in parallel with summary records where applicable, with a view to assessing the experience of using digital recordings and, on the basis of that assessment, taking a decision at a future session regarding the possible replacement of summary records by digital recordings;[23]

22. *Recalls* paragraph 48 of its resolution 66/246 of 24 December 2011 regarding the rotation scheme of meetings between Vienna and New York;

23. *Stresses* the importance of promoting the use of texts emanating from the work of the Commission for the global unification and harmonization of international trade law, and to this end urges States that have not yet done so to consider signing, ratifying or acceding to conventions, enacting model laws and encouraging the use of other relevant texts;

24. *Notes with appreciation* the work of the Secretariat on the system for the collection and dissemination of case law on Commission texts in the six official languages of the United Nations (the CLOUT system), notes the resource-intensive nature of the system, acknowledges the need for further resources to sustain and expand it, and in this regard welcomes efforts by the Secretariat towards building partnerships with interested institutions, and appeals to Governments, the relevant bodies of the United Nations system, organizations, institutions and individuals to assist the secretariat of the Commission in raising awareness as to the availability and usefulness of the CLOUT system in professional, academic and judiciary circles and in securing the funding required for the coordination and expansion of the system and the establishment, within the secretariat of the Commission, of a pillar focused on the promotion of ways and means of interpreting Commission texts in a uniform manner;

25. *Welcomes* the continuing work of the Secretariat on digests of case law related to Commission texts, including their wide dissemination, as well as the

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[21] Resolutions 52/214, sect. B, 57/283 B, sect. III, and 58/250, sect. III.

[22] See resolutions 59/39, para. 9, and 65/21, para. 18; see also *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 17* (A/59/17), paras. 124–128.

[23] See *Official Records of the General Assembly, Sixty-ninth Session, Supplement No. 17* (A/69/17), para. 276.

continuing increase in the number of abstracts available through the CLOUT system, in view of the role of the digests and the CLOUT system as important tools for the promotion of the uniform interpretation of international trade law, in particular by building local capacity of judges, arbitrators and other legal practitioners to interpret those standards in the light of their international character and the need to promote uniformity in their application and the observance of good faith in international trade, and notes the satisfaction of the Commission with the performance of the New York Convention website[24] and the successful coordination between that website and the CLOUT system;

26. *Recalls* its resolutions affirming the importance of high-quality, user-friendly and cost-effective United Nations websites and the need for their multilingual development, maintenance and enrichment,[25] commends the fact that the website of the Commission is published simultaneously in the six official languages of the United Nations, and welcomes the continuous efforts of the Commission to maintain and improve its website, including by developing its latest updated version, and to enhance the visibility of its work by utilizing social media features in accordance with the applicable guidelines.[26]

[24] www.newyorkconvention1958.org.

[25] Resolution 52/214, sect. C, para. 3; 55/222, sect. III, para. 12; 56/64 B, sect. X; 57/130 B, sect. X; 58/101 B, sect. V, paras. 61–76; 59/126 B, sect. V, paras. 76–95; 60/109 B, sect. IV, paras. 66–80; and 61/121 B, sect. IV, paras. 65–77.

[26] See resolution 63/120, para. 20.

Draft resolution II
United Nations Convention on International Settlement Agreements Resulting from Mediation

The General Assembly,

Recalling its resolution 2205 (XXI) of 17 December 1966, by which it established the United Nations Commission on International Trade Law with a mandate to further the progressive harmonization and unification of the law of international trade and in that respect to bear in mind the interests of all peoples, in particular those of developing countries, in the extensive development of international trade,

Recalling also its resolution 57/18 of 19 November 2002, in which it noted the adoption by the Commission of the Model Law on International Commercial Conciliation[1] and expressed the conviction that the Model Law, together with the Conciliation Rules of the Commission[2] recommended in its resolution 35/52 of 4 December 1980, contributes significantly to the establishment of a harmonized legal framework for the fair and efficient settlement of disputes arising in international commercial relations,

Recognizing the value of mediation as a method of amicably settling disputes arising in the context of international commercial relations,

Convinced that the adoption of a convention on international settlement agreements resulting from mediation that is acceptable to States with different legal, social and economic systems would complement the existing legal framework on international mediation and contribute to the development of harmonious international economic relations,

Noting that the decision of the Commission to concurrently prepare a convention on international settlement agreements resulting from mediation and an amendment to the Model Law on International Commercial Conciliation was intended to accommodate the different levels of experience with mediation in different jurisdictions and to provide States with consistent standards on the cross-border enforcement of international settlement agreements resulting from mediation, without creating any expectation that interested States may adopt either instrument,[3]

Noting with satisfaction that the preparation of the draft convention was the subject of due deliberation and that the draft convention benefited from consultations with Governments as well as intergovernmental and non-governmental organizations,

Taking note of the decision of the Commission at its fifty-first session to submit the draft convention to the General Assembly for its consideration,[4]

Taking note with satisfaction of the draft convention approved by the Commission,[5]

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[1] Resolution 57/18, annex.

[2] *Official Records of the General Assembly, Thirty-fifth Session, Supplement No. 17* (A/35/17), para. 106; see also *Yearbook of the United Nations Commission on International Trade Law*, vol. XI: 1980, part three, annex II.

[3] *Official Records of the General Assembly, Seventy-second Session, Supplement No. 17* (A/72/17), paras. 238–239; see also A/CN.9/901, para. 52.

[4] *Official Records of the General Assembly, Seventy-third Session, Supplement No. 17* (A/73/17), para. 49.

[5] Ibid., annex I.

Expressing its appreciation to the Government of Singapore for its offer to host a signing ceremony for the Convention in Singapore,

1. *Commends* the United Nations Commission on International Trade Law for preparing the draft convention on international settlement agreements resulting from mediation;

2. *Adopts* the United Nations Convention on International Settlement Agreements Resulting from Mediation, contained in the annex to the present resolution;

3. *Authorizes* a ceremony for the opening for signature of the Convention to be held in Singapore on 7 August 2019, and recommends that the Convention be known as the "Singapore Convention on Mediation";

4. *Calls upon* those Governments and regional economic integration organizations that wish to strengthen the legal framework on international dispute settlement to consider becoming a party to the Convention.

Annex
United Nations Convention on International Settlement Agreements Resulting from Mediation

Preamble

The Parties to this Convention,

Recognizing the value for international trade of mediation as a method for settling commercial disputes in which the parties in dispute request a third person or persons to assist them in their attempt to settle the dispute amicably,

Noting that mediation is increasingly used in international and domestic commercial practice as an alternative to litigation,

Considering that the use of mediation results in significant benefits, such as reducing the instances where a dispute leads to the termination of a commercial relationship, facilitating the administration of international transactions by commercial parties and producing savings in the administration of justice by States,

Convinced that the establishment of a framework for international settlement agreements resulting from mediation that is acceptable to States with different legal, social and economic systems would contribute to the development of harmonious international economic relations,

Have agreed as follows:

Article 1. Scope of application

1. This Convention applies to an agreement resulting from mediation and concluded in writing by parties to resolve a commercial dispute ("settlement agreement") which, at the time of its conclusion, is international in that:

(a) At least two parties to the settlement agreement have their places of business in different States; or

(b) The State in which the parties to the settlement agreement have their places of business is different from either:

(i) The State in which a substantial part of the obligations under the settlement agreement is performed; or

(ii) The State with which the subject matter of the settlement agreement is most closely connected.

2. This Convention does not apply to settlement agreements:

(a) Concluded to resolve a dispute arising from transactions engaged in by one of the parties (a consumer) for personal, family or household purposes;

(b) Relating to family, inheritance or employment law.

3. This Convention does not apply to:

(a) Settlement agreements:

(i) That have been approved by a court or concluded in the course of proceedings before a court; and

(ii) That are enforceable as a judgment in the State of that court;

(b) Settlement agreements that have been recorded and are enforceable as an arbitral award.

Article 2. Definitions

1. For the purposes of article 1, paragraph 1:

(a) If a party has more than one place of business, the relevant place of business is that which has the closest relationship to the dispute resolved by the settlement agreement, having regard to the circumstances known to, or contemplated by, the parties at the time of the conclusion of the settlement agreement;

(b) If a party does not have a place of business, reference is to be made to the party's habitual residence.

2. A settlement agreement is "in writing" if its content is recorded in any form. The requirement that a settlement agreement be in writing is met by an electronic communication if the information contained therein is accessible so as to be useable for subsequent reference.

3. "Mediation" means a process, irrespective of the expression used or the basis upon which the process is carried out, whereby parties attempt to reach an amicable settlement of their dispute with the assistance of a third person or persons ("the mediator") lacking the authority to impose a solution upon the parties to the dispute.

Article 3. General principles

1. Each Party to the Convention shall enforce a settlement agreement in accordance with its rules of procedure and under the conditions laid down in this Convention.

2. If a dispute arises concerning a matter that a party claims was already resolved by a settlement agreement, a Party to the Convention shall allow the party to invoke the settlement agreement in accordance with its rules of procedure and under the conditions laid down in this Convention, in order to prove that the matter has already been resolved.

Article 4. Requirements for reliance on settlement agreements

1. A party relying on a settlement agreement under this Convention shall supply to the competent authority of the Party to the Convention where relief is sought:

(a) The settlement agreement signed by the parties;

(b) Evidence that the settlement agreement resulted from mediation, such as:

(i) The mediator's signature on the settlement agreement;

(ii) A document signed by the mediator indicating that the mediation was carried out;

(iii) An attestation by the institution that administered the mediation; or

(iv) In the absence of (i), (ii) or (iii), any other evidence acceptable to the competent authority.

2. The requirement that a settlement agreement shall be signed by the parties or, where applicable, the mediator is met in relation to an electronic communication if:

(a) A method is used to identify the parties or the mediator and to indicate the parties' or mediator's intention in respect of the information contained in the electronic communication; and

(b) The method used is either:

(i) As reliable as appropriate for the purpose for which the electronic communication was generated or communicated, in the light of all the circumstances, including any relevant agreement; or

(ii) Proven in fact to have fulfilled the functions described in subparagraph (a) above, by itself or together with further evidence.

3. If the settlement agreement is not in an official language of the Party to the Convention where relief is sought, the competent authority may request a translation thereof into such language.

4. The competent authority may require any necessary document in order to verify that the requirements of the Convention have been complied with.

5. When considering the request for relief, the competent authority shall act expeditiously.

Article 5. Grounds for refusing to grant relief

1. The competent authority of the Party to the Convention where relief is sought under article 4 may refuse to grant relief at the request of the party against whom the relief is sought only if that party furnishes to the competent authority proof that:

(a) A party to the settlement agreement was under some incapacity;

(b) The settlement agreement sought to be relied upon:

(i) Is null and void, inoperative or incapable of being performed under the law to which the parties have validly subjected it or, failing any indication thereon, under the law deemed applicable by the competent authority of the Party to the Convention where relief is sought under article 4;

(ii) Is not binding, or is not final, according to its terms; or

(iii) Has been subsequently modified;

(c) The obligations in the settlement agreement:

(i) Have been performed; or

(ii) Are not clear or comprehensible;

(d) Granting relief would be contrary to the terms of the settlement agreement;

(e) There was a serious breach by the mediator of standards applicable to the mediator or the mediation without which breach that party would not have entered into the settlement agreement; or

(f) There was a failure by the mediator to disclose to the parties circumstances that raise justifiable doubts as to the mediator's impartiality or independence and such failure to disclose had a material impact or undue influence on a party without which failure that party would not have entered into the settlement agreement.

2. The competent authority of the Party to the Convention where relief is sought under article 4 may also refuse to grant relief if it finds that:

(a) Granting relief would be contrary to the public policy of that Party; or

(b) The subject matter of the dispute is not capable of settlement by mediation under the law of that Party.

Article 6. Parallel applications or claims

If an application or a claim relating to a settlement agreement has been made to a court, an arbitral tribunal or any other competent authority which may affect the relief being sought under article 4, the competent authority of the Party to the Convention where such relief is sought may, if it considers it proper, adjourn the decision and may also, on the request of a party, order the other party to give suitable security.

Article 7. Other laws or treaties

This Convention shall not deprive any interested party of any right it may have to avail itself of a settlement agreement in the manner and to the extent allowed by the law or the treaties of the Party to the Convention where such settlement agreement is sought to be relied upon.

Article 8. Reservations

1. A Party to the Convention may declare that:

(a) It shall not apply this Convention to settlement agreements to which it is a party, or to which any governmental agencies or any person acting on behalf of a governmental agency is a party, to the extent specified in the declaration;

(b) It shall apply this Convention only to the extent that the parties to the settlement agreement have agreed to the application of the Convention.

2. No reservations are permitted except those expressly authorized in this article.

3. Reservations may be made by a Party to the Convention at any time. Reservations made at the time of signature shall be subject to confirmation upon ratification, acceptance or approval. Such reservations shall take effect simultaneously with the entry into force of this Convention in respect of the Party to the Convention concerned. Reservations made at the time of ratification, acceptance or approval of this Convention or accession thereto, or at the time of making a declaration under article 13 shall take effect simultaneously with the entry into force of this Convention in respect of the Party to the Convention concerned. Reservations deposited after the entry into force of the Convention for that Party to the Convention shall take effect six months after the date of the deposit.

4. Reservations and their confirmations shall be deposited with the depositary.

5. Any Party to the Convention that makes a reservation under this Convention may withdraw it at any time. Such withdrawals are to be deposited with the depositary, and shall take effect six months after deposit.

Article 9. Effect on settlement agreements

The Convention and any reservation or withdrawal thereof shall apply only to settlement agreements concluded after the date when the Convention, reservation or withdrawal thereof enters into force for the Party to the Convention concerned.

Article 10. Depositary

The Secretary-General of the United Nations is hereby designated as the depositary of this Convention.

Article 11. Signature, ratification, acceptance, approval, accession

1. This Convention is open for signature by all States in Singapore, on 7 August 2019, and thereafter at United Nations Headquarters in New York.

2. This Convention is subject to ratification, acceptance or approval by the signatories.

3. This Convention is open for accession by all States that are not signatories as from the date it is open for signature.

4. Instruments of ratification, acceptance, approval or accession are to be deposited with the depositary.

Article 12. Participation by regional economic integration organizations

1. A regional economic integration organization that is constituted by sovereign States and has competence over certain matters governed by this Convention may similarly sign, ratify, accept, approve or accede to this Convention. The regional economic integration organization shall in that case have the rights and obligations of a Party to the Convention, to the extent that that organization has competence over matters governed by this Convention. Where the number of Parties to the Convention is relevant in this Convention, the regional economic integration organization shall not count as a Party to the Convention in addition to its member States that are Parties to the Convention.

2. The regional economic integration organization shall, at the time of signature, ratification, acceptance, approval or accession, make a declaration to the depositary specifying the matters governed by this Convention in respect of which competence has been transferred to that organization by its member States. The regional economic integration organization shall promptly notify the depositary of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph.

3. Any reference to a "Party to the Convention", "Parties to the Convention", a "State" or "States" in this Convention applies equally to a regional economic integration organization where the context so requires.

4. This Convention shall not prevail over conflicting rules of a regional economic integration organization, whether such rules were adopted or entered into force before or after this Convention: (a) if, under article 4, relief is sought in a State that is member of such an organization and all the States relevant under article 1, paragraph 1, are members of such an organization; or (b) as concerns the recognition or enforcement of judgments between member States of such an organization.

Article 13. Non-unified legal systems

1. If a Party to the Convention has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention,

it may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them, and may amend its declaration by submitting another declaration at any time.

2. These declarations are to be notified to the depositary and are to state expressly the territorial units to which the Convention extends.

3. If a Party to the Convention has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention:

(a) Any reference to the law or rule of procedure of a State shall be construed as referring, where appropriate, to the law or rule of procedure in force in the relevant territorial unit;

(b) Any reference to the place of business in a State shall be construed as referring, where appropriate, to the place of business in the relevant territorial unit;

(c) Any reference to the competent authority of the State shall be construed as referring, where appropriate, to the competent authority in the relevant territorial unit.

4. If a Party to the Convention makes no declaration under paragraph 1 of this article, the Convention is to extend to all territorial units of that State.

Article 14. Entry into force

1. This Convention shall enter into force six months after deposit of the third instrument of ratification, acceptance, approval or accession.

2. When a State ratifies, accepts, approves or accedes to this Convention after the deposit of the third instrument of ratification, acceptance, approval or accession, this Convention shall enter into force in respect of that State six months after the date of the deposit of its instrument of ratification, acceptance, approval or accession. The Convention shall enter into force for a territorial unit to which this Convention has been extended in accordance with article 13 six months after the notification of the declaration referred to in that article.

Article 15. Amendment

1. Any Party to the Convention may propose an amendment to the present Convention by submitting it to the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the Parties to the Convention with a request that they indicate whether they favour a conference of Parties to the Convention for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the Parties to the Convention favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations.

2. The conference of Parties to the Convention shall make every effort to achieve consensus on each amendment. If all efforts at consensus are exhausted and no consensus is reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the Parties to the Convention present and voting at the conference.

3. An adopted amendment shall be submitted by the depositary to all the Parties to the Convention for ratification, acceptance or approval.

4. An adopted amendment shall enter into force six months after the date of deposit of the third instrument of ratification, acceptance or approval. When an amendment

enters into force, it shall be binding on those Parties to the Convention that have expressed consent to be bound by it.

5. When a Party to the Convention ratifies, accepts or approves an amendment following the deposit of the third instrument of ratification, acceptance or approval, the amendment shall enter into force in respect of that Party to the Convention six months after the date of the deposit of its instrument of ratification, acceptance or approval.

Article 16. Denunciations

1. A Party to the Convention may denounce this Convention by a formal notification in writing addressed to the depositary. The denunciation may be limited to certain territorial units of a non-unified legal system to which this Convention applies.

2. The denunciation shall take effect 12 months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation shall take effect upon the expiration of such longer period after the notification is received by the depositary. The Convention shall continue to apply to settlement agreements concluded before the denunciation takes effect.

DONE in a single original, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic.

Draft resolution III
Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation of the United Nations Commission on International Trade Law

The General Assembly,

Recalling its resolution 2205 (XXI) of 17 December 1966, by which it established the United Nations Commission on International Trade Law with a mandate to further the progressive harmonization and unification of the law of international trade and in that respect to bear in mind the interests of all peoples, in particular those of developing countries, in the extensive development of international trade,

Recalling also its resolution 57/18 of 19 November 2002, in which it noted the adoption by the Commission of the Model Law on International Commercial Conciliation[1] and expressed the conviction that the Model Law, together with the Conciliation Rules of the Commission[2] recommended in its resolution 35/52 of 4 December 1980, contributes significantly to the establishment of a harmonized legal framework for the fair and efficient settlement of disputes arising in international commercial relations,

Recognizing the value of mediation as a method of amicably settling disputes arising in the context of international commercial relations,

Believing that the amendments to the Model Law on International Commercial Conciliation will significantly assist States in enhancing their legislation governing the use of modern mediation techniques and in formulating such legislation where none currently exists,

Noting that the decision of the Commission to concurrently prepare a convention on international settlement agreements resulting from mediation and an amendment to the Model Law on International Commercial Conciliation was intended to accommodate the different levels of experience with mediation in different jurisdictions and to provide States with consistent standards on the cross-border enforcement of international settlement agreements resulting from mediation, without creating any expectation that interested States may adopt either instrument,[3]

Noting with satisfaction that the preparation of the amendments to the Model Law was the subject of due deliberation and that they benefited from consultations with Governments as well as with intergovernmental and non-governmental organizations,

1. *Expresses its appreciation* to the United Nations Commission on International Trade Law for finalizing and adopting the Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation (amending the Model Law on International Commercial Conciliation);[4]

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[1] Resolution 57/18, annex.

[2] *Official Records of the General Assembly, Thirty-fifth Session, Supplement No. 17* (A/35/17), para. 106; see also *Yearbook of the United Nations Commission on International Trade Law*, vol. XI: 1980, part three, annex II.

[3] *Official Records of the General Assembly, Seventy-second Session, Supplement No. 17* (A/72/17), paras. 238–239; see also A/CN.9/901, para. 52.

[4] *Official Records of the General Assembly, Seventy-third Session, Supplement No. 17* (A/73/17), annex II.

2. *Requests* the Secretary-General to transmit the text of the Model Law to Governments and other interested bodies;

3. *Recommends* that all States give favourable consideration to the Model Law when revising or adopting legislation relevant to mediation, bearing in mind the desirability of uniformity of the law of mediation procedures and the specific needs of international commercial mediation practice, and invites States that have used the Model Law to advise the Commission accordingly.

Draft resolution IV
Model Law on Recognition and Enforcement of Insolvency-Related Judgments of the United Nations Commission on International Trade Law

The General Assembly,

Recalling its resolution 2205 (XXI) of 17 December 1966, by which it established the United Nations Commission on International Trade Law with a mandate to further the progressive harmonization and unification of the law of international trade and in that respect to bear in mind the interests of all peoples, in particular those of developing countries, in the extensive development of international trade,

Recognizing that effective insolvency regimes are increasingly seen as a means of encouraging economic development and investment, as well as fostering entrepreneurial activity and preserving employment,

Convinced that the law of recognition and enforcement of judgments is becoming more and more important in a world in which it is increasingly easy for enterprises and individuals to have assets in more than one State and to move assets across borders,

Considering that international instruments on the recognition and enforcement of judgments in civil and commercial matters exclude insolvency-related judgments from their scope,

Concerned that inadequate coordination and cooperation in cases of cross-border insolvency, which lead to uncertainties associated with recognition and enforcement of insolvency-related judgments, can operate as an obstacle to the fair, efficient and effective administration of cross-border insolvencies, reducing the possibility of rescuing financially troubled but viable businesses, making it more likely that debtors' assets would be concealed or dissipated and hindering reorganizations or liquidations that would be the most advantageous for all interested persons, including the debtors, the debtors' employees and the creditors,

Convinced that fair and internationally standardized legislation on cross-border insolvency that respects national procedural and judicial systems, as expressed by the provisions of the Model Law on Recognition and Enforcement of Insolvency-Related Judgments,[1] that is acceptable to States with different legal, social and economic systems would contribute to the development of international trade and investment,

1. *Expresses its appreciation* to the United Nations Commission on International Trade Law for finalizing and adopting the Model Law on Recognition and Enforcement of Insolvency-Related Judgments[1] and its guide to enactment;

2. *Requests* the Secretary-General to transmit the text of the Model Law, together with its guide to enactment, to Governments and other interested bodies;

3. *Recommends* that all States give favourable consideration to the Model Law when revising or adopting legislation relevant to insolvency, bearing in mind the need for internationally harmonized legislation governing and facilitating instances of cross-border insolvency, and invites States that have used the Model Law to advise the Commission accordingly;

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[1] *Official Records of the General Assembly, Seventy-third Session, Supplement No. 17* (A/73/17), annex III.

4. *Also recommends* that all States continue to consider implementation of the Model Law on Cross-Border Insolvency of the United Nations Commission on International Trade Law.[2]

[2] Resolution 52/158, annex.